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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CLAUDIA R. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARIA E. et al.,

Defendants and Appellants.

D049780

(Super. Ct. No. SJ11613B, C)

APPEAL from orders of the Superior Court of San Diego County, Peter Riddle,
Judge. Affirmed in part; modified in part; dismissed in part.

Maria E. and Severiano R. appeal orders declaring their minor children Claudia R.
and Dulce R. (together minors) dependents of the juvenile court under Welfare and
Institutions Code¹ section 300, subdivisions (b) and (g) and removing the minors from

¹ Statutory references are to the Welfare and Institutions Code.

parental custody under section 361, subdivision (c)(1). Maria and Severiano challenge the sufficiency of the evidence to support the court's jurisdictional and dispositional findings. We conclude substantial evidence supports the court's jurisdictional findings under section 300, subdivision (b), but not under subdivision (g). As to the court's dispositional orders, we conclude the issue is moot because the minors have been returned to Maria's custody.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2006, the San Diego County Health and Human Services Agency (Agency) took 14-year-old Claudia and 11-year-old Dulce into protective custody after Drug Enforcement Agency (DEA) agents executed a search warrant at their home where they lived with Maria and three of their siblings.² The home had been under video surveillance by the DEA since December 2005 as part of an ongoing investigation into drug smuggling and sales. Although the agents found no drugs during the search, they found a fully-loaded handgun in a shoe under the bed of the minors' 16-year-old brother Gilberto. The bed was in a common area where the children played. The agents also found 10 cellular telephones and several empty speaker boxes, which they believed were used to facilitate drug transactions. Immigration officials arrested Maria and deported her to Mexico because her green card had expired. She illegally returned to San Diego the next month.

² The minors' four-year-old sister Jennifer and 16-year-old brother Gilberto were also taken into protective custody. They are not subjects of this appeal. Jennifer is the subject of a separate appeal.

Severiano had been arrested several months earlier for attempting to bring drugs into the United States from Mexico. Dulce, Gilberto and their 17-year-old brother Joel were with their father when he was arrested. Later that day, federal agents intercepted a telephone call between one of the minors' adult brothers and the alleged kingpin of the drug conspiracy, asking whether the family home had been "cleaned up." Severiano was charged with conspiracy to distribute methamphetamine and was in federal prison awaiting trial.

At the time of the search, social worker Erik Sanchez interviewed the children. Dulce said "sometimes" a lot of people came to the house to buy speaker boxes, but she denied seeing or knowing about any drugs there. Claudia believed the police came to the house looking for her brothers Joel and Gilberto because they were "runners." Claudia explained her older brother Olegario would give Joel and Gilberto packets of a white substance, which she knew was "crystal," to deliver to various people. Claudia told Sanchez she had been involved in running drugs, although she did not want to do so. Claudia did not know if there were drugs in the home. Joel was on house arrest for transporting drugs across the border and Gilberto was awaiting a probation hearing for a theft crime. Joel and Gilberto denied knowing why the police had come to their house or whether there were any drugs there.

Agency filed amended petitions in the juvenile court on behalf of the minors under section 300, subdivision (b), alleging a gun was found under the bed of the minors' sibling, and the gun was accessible to the minors. Claudia's petition further alleged the parents allowed Claudia's older brothers to use her to transport drugs. (§ 300, subd. (b).)

Under section 300, subdivision (g), the petitions alleged the parents were incarcerated and unable to arrange for appropriate care for the minors. The court detained the minors in foster care.

According to a report prepared for the jurisdiction and disposition hearings, the minors had run away from their foster home and their whereabouts were unknown. Maria said they were with an aunt in Mexico, but she did not know the address or how to contact them.

Social worker Lidia Briano was concerned that Maria and Severiano had exposed the minors to criminal activity, drugs and guns in the home. She was also concerned that Severiano and Olegario had used the younger children as pawns in their drug dealing business. Maria said she was upset with Severiano and wanted nothing to do with him. She claimed she did not know Severiano or her sons were involved in illegal activity, and said no one in the home used drugs.

Maria had a prior felony conviction for possessing marijuana for sale and had been placed on probation for three years, conditioned on serving 180 days in jail. Briano recommended out-of-home placement for the minors because of the family's involvement in the drug business and the risk of retaliation from other drug dealers. Additionally, Maria needed services to help her recognize the risk to which she exposed her children. She also needed to show she could care for and support them legally, and prevent them from being involved in their older brothers' drug dealing activities.

At a contested jurisdiction hearing, Maria testified no visitors came to her home other than the children's friends and the paternal uncle. She denied knowing any of the

coconspirators named in a federal indictment filed against Severiano. Maria testified she did not permit drugs in her home and was unaware of any drug trafficking there. Maria admitted she had a prior drug conviction, but claimed the drugs were not hers. She knew Severiano's gun was in the house, but believed it was kept under her mattress. She did not know how Gilberto obtained the gun. Maria did not plan to reunite with Severiano.

Briano testified she was concerned about the safety of the minors because a fully-loaded handgun was found within their reach, the older siblings were involved in drug dealing and they had used Claudia as a drug runner. Maria continued to deny her sons were involved in drug trafficking even when presented with evidence her home and family had been under surveillance by the DEA. She believed the social worker fabricated information that Claudia's brothers had used her as a drug runner. Because of Maria's persistent denial, Briano believed the minors were at risk of being used in the family's drug trafficking business in the future.

After considering the evidence and hearing argument of counsel, the court sustained the allegations of the petitions under section 300, subdivisions (b) and (g) by clear and convincing evidence. The court made no dispositional findings because the minors' whereabouts remained unknown.

About a month later, the minors returned to San Diego and were detained in foster care. During the six months Claudia was away, she maintained regular contact with her brothers and Maria. She now said everything in the social worker's report was false, and denied ever being interviewed by a social worker. She also denied that her brothers

coerced her into running drugs for them. Dulce said her family did nothing wrong and "everyone lied about what happened."

Maria had been attending therapy, and continued to adamantly deny any criminal or drug-related activity by her children. She refused to take responsibility for the minors' dependency and she did not recognize her husband's and sons' drug dealing placed the minors at risk. Maria appeared to place her own needs before those of her children by talking to them about the case and sending them copies of Agency's reports. Maria made inappropriate promises to the minors, which upset and confused them, about when they would return home. Consequently, Maria's conversations with the minors during visits had to be closely monitored to prevent her from discussing the details of the dependency case.

The social worker remained concerned that Maria influenced or encouraged the minors to recant their earlier statements. The minors blamed themselves for their removal from Maria's custody because of their disclosures to the social worker. Instead of accepting responsibility for her role in the minors' removal and reassuring the minors it was not their fault, Maria continued to insist the minors were unjustifiably removed from her care, which caused them emotional damage and inhibited them from disclosing problems in the future.

At a contested disposition hearing, the court declared the minors dependents, removed them from parental custody and placed them in foster care.

DISCUSSION

I

Maria and Severiano challenge the sufficiency of the evidence to support the court's jurisdictional findings under section 300, subdivision (b). They assert there was no showing the minors had suffered, or were at risk of suffering, serious physical harm because a gun was found under Gilberto's bed. They further assert Claudia denied being used as a drug runner, and there was no corroborating evidence to support this allegation.

A

In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal. App.4th 596, 610.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child or provide adequate medical treatment. In enacting section 300, the Legislature intended to

protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of *children who are at risk of that harm.*" (§ 300.2; italics added.) The court need not wait until a child is seriously injured to assume jurisdiction and take the steps necessary to protect the child. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196; *In re Michael S.* (1981) 127 Cal.App.3d 348, 357-358.)

Here, the evidence showed a loaded handgun was found under 16-year-old Gilberto's bed, in an unsecured area where the children played. Even if the gun was out of the minors' sight, it was not out of their reach. There was a risk to the minors' physical health and safety because Maria knew there was a gun in the home, but failed to prevent the gun from being moved somewhere accessible to her children, showing a gross lack of attention to their welfare. (See *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1651.)

The minors were also at risk of substantial harm because drug trafficking was occurring in their home and their older brothers were using Claudia to help transport methamphetamine. Despite Maria's refusal to acknowledge her family's involvement, the evidence showed DEA agents had been monitoring the home with video surveillance because of suspected drug activity. Severiano had been arrested, with Dulce and two of his other children in the car, for transporting methamphetamine across the international border. Joel and Gilberto were also implicated in smuggling methamphetamine into the United States from Mexico. When the family home was searched, agents found 10 cellular telephones and empty speaker boxes, which were likely used to facilitate drug transactions. Dulce said people came to the house to buy speaker boxes. Claudia knew

Joel and Gilberto were involved in transporting drugs for another brother, and she reluctantly transported drugs for them.

Although Maria claimed no one in her home used drugs and she would not allow drug trafficking to occur there, the court expressly disbelieved her. The court was entitled to disbelieve Claudia when she recanted her former statements that she had participated in her brothers' drug running. We cannot reweigh the evidence or substitute our judgment for that of the trial court. (*In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53.)

Further, at the time of the jurisdiction hearing, the minors remained at risk of harm because Maria refused to acknowledge or accept responsibility for the drug activity occurring in her home or the danger of having a loaded gun accessible to her children. Despite evidence from the DEA surveillance, Maria continued to deny her sons were involved in drug dealing. She accused the social worker of lying about Claudia's statement regarding transporting drugs for her brothers. In the social worker's opinion, Maria's steadfast denial of, and failure to accept responsibility for, the illegal activities in her home placed the minors at risk of being used in the family's drug trafficking business in the future. Substantial evidence supports the court's jurisdictional findings under section 300, subdivision (b).

II

Maria and Severiano challenge the court's jurisdictional finding under section 300, subdivision (g) because at the time of the jurisdiction hearing, Maria was no longer incarcerated.³ We agree the subdivision (g) finding must be stricken.

At the jurisdiction hearing on sibling Jennifer's petition, the court sustained the allegations under section 300, subdivision (b) and granted Agency's request to dismiss the allegations under subdivision (g) because Maria was no longer in custody. As to the minors' petitions, the court sustained the allegations without specifying whether its findings were under subdivision (b), subdivision (g) or both, but the minute orders reflect jurisdiction was based on section 300, subdivisions (b) *and* (g). However, as in Jennifer's case, the subdivision (g) allegations were unsupported by the evidence because Maria was not incarcerated. Further, Maria did not leave the minors without any provision for support; rather, the minors ran away from their foster home. The court's failure to dismiss the finding under section 300, subdivision (g) was ostensibly an oversight and must be stricken.

³ Under section 300, subdivision (g), the court may assume jurisdiction of a minor who has been left without any provision for support or whose parent has been incarcerated and cannot arrange for the child's care.

III

At the request of Maria's counsel, we take judicial notice of the juvenile court's minute orders of January 31, 2007, placing the minors with Maria. Although Maria acknowledges the dispositional orders removing the minors from her custody no longer exist and thus the issue is moot, she asks us to exercise our discretion to review the propriety of the orders. We decline to do so.

An appellate court will not review questions which are moot and only of academic importance, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be affected by the decision either way. (*Keefer v. Keefer* (1939) 31 Cal.App.2d 335, 337; *Save Tara v. City of West Hollywood* (2007) 147 Cal.App.4th 1091, 1114.) The duty of an appellate court is to decide actual controversies and not to give opinions on moot questions or abstract propositions, or to declare principles of law that cannot affect the matter at issue in the case before it. (*In re Audrey D.* (1979) 100 Cal.App.3d 34, 39, fn. 4.)

Further, an appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404-405; *In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.)

Here, no effective relief can be afforded Maria or Severiano as to the dispositional orders because the juvenile court has returned the minors to Maria's custody after determining they are now safe with her. Because the issue presented will not affect the outcome of this case in a subsequent proceeding and is not of broad public interest likely to recur, we decline to exercise our inherent discretion to resolve it. (*In re Andres G.* (1998) 64 Cal.App.4th 476, 483-484; cf. *In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158-1159; *In re William M.* (1970) 3 Cal.3d 16, 19, 23 [delinquency court's refusal to consider specific facts supporting release of juvenile before jurisdictional hearing was issue of broad public concern likely to recur]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [jurisdictional orders will continue to adversely affect appellant].)

DISPOSITION

The court's jurisdictional findings under section 300, subdivision (g) are stricken. In all other respects, the jurisdictional orders are affirmed. The appeal from the dispositional orders is dismissed as moot.

BENKE, J.

WE CONCUR:

McCONNELL, P.J.

McINTYRE, J.